

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:07CV488-03-MU

P.J. GILYARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b><u>ORDER</u></b>
	)	
UNITED STATES	)	
	)	
Respondent.	)	
_____	)	

**THIS MATTER** comes before the Court on Petitioner’s “Motion to Grant Voluntary Dismissal” filed April 20, 2009 (Doc. No. 4.) For the reasons stated in this Order, Petitioner’s motion is denied.

On November 16, 2007 Petitioner filed a Motion to Vacate alleging that the Court imposed an illegal sentence by incorrectly determining that Petitioner’s prior conviction for escape from work release was a crime of violence for purposes of the career offender provision of the Sentencing Guidelines. (Doc. No. 1.) On November 20, 2007, this Court signed an Order denying and dismissing Petitioner’s Motion to Vacate on initial review pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings (Doc. No. 2.) Petitioner now moves for dismissal under Rule 41(a)(1) of the Federal Rule of Civil Procedure. Rule 41 allows a plaintiff to dismiss an action without a court order before the opposing party files an answer or motion for summary judgment. However, in the instant case, the Court dismissed Petitioner’s Motion to Vacate on initial review. Therefore, Petitioner’s motion to voluntarily dismiss his case is denied as moot (Doc. No. 2.)

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioners motion for voluntarily

dismissal is DENIED as moot.

**SO ORDERED.**

Signed: April 23, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

